IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.339 OF 2006
WITH
CIVIL APPLICATION NO.425 OF 2006

Kuber Bhavan Co-operative Housing Society Limited) ... Appellant

Vs.

Municipal Corporation of Greater Mumbai & Ors.) ... Respondents

Mr. J.G. Damani for the Appellant.

Ms. Geeta Joglekar for the B.M.C.

Mr.S.V. Rajeshwar for Respondent No.3.

Mr. .S. Jahagirdar, senior advocate i/b Mr. S.D. Mishra for Respondent No.4.

CORAM : A.M. KHANWILKAR, J.

DATED : 8TH JUNE, 2006.

P.C.:-

1. Heard the learned counsel for the parties. Perused the relevant material on record. I see no infirmity in the view taken by the courts below in dismissing the Notice of Motion filed by the Appellant. In the first place, the construction of the proposed building was almost complete being ground plus seven storeys. In any case, even on merits, the court below has rightly found that the building occupied by the Appellant was allowed to be erected without insisting for lay out of recreation ground and other requirements as condition

precedent and which position has been reflected in the occupation plan of the building occupied by the Appellant. The proposed building to be constructed by Respondent No.4 was to replace the existing ground floor chawl for re-accommodating the existing tenants occupying the premises in the said chawl. As it is the case of redevelopment of the existing tenements, the arrangement was permitted by the appropriate authority. It is too late for the Appellant to complain that their prior permission was not obtained before commencing the construction of the proposed building. As a matter of fact, having regard to the facts and circumstances of the present case, the requirement of prior permission of the occupants of the building occupied by the Appellants does not arise having regard to the scope of Section 7-A of the Act. Insofar as the grievance of the Appellant that the access to the existing building has been obstructed, there is no substance even in this submission. The proposed building has been constructed as per the sanction plan. Sanction plan clearly provides for requisite access to the existing building. Viewed thus, there is no substance in the grievance made before this court. The trial court has rightly rejected the stand taken on behalf of the Appellant.

2. The counsel for the Appellant lastly contended that the occupation certificate in relation to the proposed building should not be granted unless condition No.6 in the communication dated 10th April 2006 issued under the signature of the Executive Engineer (B.P) W.S. `R' Ward is fulfilled. Counsel for the Appellant submits that Respondent No.4 be atleast injuncted from parting with possession of any of the premises in the proposed building.

According to the Appellant, Respondent No.4 will induct third party and thereby make the matter fate accompli. The apprehension expressed by the Appellant is misplaced. It is well known position that the premises cannot be occupied unless occupation certificate is granted by the appropriate authority. As mentioned earlier, the appropriate authority will consider all aspect of the matter before issuance of the occupation certificate. In that sense, it is not necessary to pass any direction against Respondent No.4 regarding parting of possession. Besides, it is obvious that the transaction effected by Respondent No.4 in respect of the suit premises in the proposed building will be subject to the outcome of the present proceedings and the proposed purchasers of the premises would have purchased the tenements at their risk subject to the outcome of the proceedings instituted by the Appellant. The appeal is disposed of in the aforestated terms.

3. In view of the disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

(A.M. KHANWILKAR, J.)